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No. 80-516

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,
Petitioner,

v.

JAMES L. STEVENS and TRANS WORLD AIRLINES, INC.,
Respondents.

On Writ of Certiorari to the District of Columbia Court of Appeals

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REPLY BRIEF IN SUPPORT OF PETITION

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This Reply Brief is principally necessitated by Respondent's reliance, for the first time, upon *Hines* v. *Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976), and his assertion that Petitioner's conduct subverted the contract grievance procedure so as to remove the finality of the resolution of his grievance concerning his union security discharge. (Response, 6, 9-11). At issue here is whether the Court of Appeals erred by holding that a discharged employee is entitled to *de novo* judicial consideration of the propriety of his discharge notwithstanding the existence of a labor contract which provides for an exclusive, final and binding arbitral remedy, and despite the fact that the employee unsuccessfully exercised that remedy. Prior to the filing of the Response, Respondent had never suggested—nor did the Court of

Appeals—that ALPA had subverted the grievance procedure. Rather, the Court of Appeals observed that Respondent's suit sought to pursue an "estoppel" claim distinct from his initial objections to discharge for nonpayment of ALPA service charges and held, without explanation, that the contract grievance procedure did "not provide the exclusive remedy" for such a claim (Petition, 6a).

Contrary to the suggestion implicit in the Court of Appeals' opinion, issues of estoppel are frequently presented and resolved in labor arbitration (Petition, 11, fn. 6). The Court of Appeals' holding that such claims are nonarbitrable is contrary to a host of decisions of this Court insisting upon the finality of grievance resolutions and the presumption of arbitrability as essential to federal labor policy (Petition, 8-14). The Response does not dispute that Respondent presented his estoppel complaint—that he was misled by ALPA's billing notices—under the grievance procedure and that it was held to be without merit (Response, p. 9). Rather, Respondent asserts, for the first time, that ALPA's conduct subverted the arbitral process so as to remove the finality of the grievance resolution under the doctrine of *Hines*.

Hines recognizes a narrow exception to the finality principle which is manifestly inapplicable to this case and was not even presented to, or considered by, the court below. In *Hines*, this Court held that where a union's handling of a contract grievance has been so inadequate as to breach its duty of fair representation, the arbitration process is subverted and the arbitral resoluiton does not bar litigation of the contract breach. Here, unlike *Hines*, Respondent has never even pleaded breach by ALPA of its duty of fair representation; the conduct of which he complains—ALPA's use of an assertedly misleading billing notice—is not even related to the arbitration process. ALPA's billing notice, even if

assumed to be unclear, would in no way cloud Respondent's prospects of obtaining a fair decision through the grievance procedure. Significantly, the Court of Appeals' holding in this case is not based on *Hines* nor is the exception to the exclusivity and finality of the grievance procedure which the Court of Appeals recognizes limited to cases involving subversion of the arbitration process. As such, the exception is directly contrary to the holding of this Court in *Drake Bakeries, Inc.* v. *Local 50, American Bakery Workers*, 370 U.S. 254 (1962) that "[a]rbitration provisions, which themselves have not been repudiated, are meant to survive breaches of contract. . . ." 370 U.S. at 262. If arbitral finality can be overcome in this case by an assertion of subversion, the same would be true in *Drake Bakeries* and other cases involving breaches of the contract apart from the grievance procedure. It is because the Court of Appeals' decision threatens to open the courts to an as yet undefined plethora of contract grievances, without regard to subversion by the union of the arbitration process, that Petitioner urges that the Petition be granted and the decision below be reversed in order to assure continued effectuation of the federal labor policy favoring final and binding dispute resolution through arbitration.

Finally, as stated in our Supplemental Brief submitted following the grant of certiorari in *Barrentine* v. *Arkansas-Best Freight Systems, Inc.*, No. 79-2006, the Court may wish to withhold action on this Petition pending a decision in *Barrentine*. Respondent's argument to the contrary (Response, 11) is transparent. The fact that *Barrentine* involved "an employee's second attempt to have a hearing on the wages due him" whereas this case involves a discharge is immaterial; both cases involve efforts to obtain *de novo* judicial consideration of contract grievances already resolved under contract grievance procedures. If, as held by the Eighth Circuit in *Barrentine*, arbitral finality bars litigation even of a

claim based on the Fair Labor Standards Act, it is a *fortiori* the case that state common law remedies would be barred as well. As suggested in our Supplemental Brief at 3, even if *de novo* judicial consideration is held available for FLSA claims based on the rationale of *Alexander* v. *Gardner-Denver*, 415 U.S. 36 (1974), the Court should still disapprove the decision of the Court of Appeals here as expanding inappropriately upon the circumstances under which *de novo* judicial consideration is available following conclusion of a final and binding grievance procedure.

CONCLUSION

We continue to believe that the Court of Appeals' decision warrants summary reversal *per curiam*. Given the pendency of *Barrentine*, we suggest the Court may wish to withhold disposition of this Petition pending a decision therein.

Respectfully submitted,

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